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Atty Docket No.: 100203850-1
App. Ser. No.: 10/675,943

REMARKS

Favorable reconsideration of this application is respectfully requested in view of the claim amendments and following remarks.

By virtue of the amendments above, Claims 1-3, 10, and 16-24 have been amended and Claims 8 and 15 have been previously canceled without prejudice or disclaimer of the subject matter contained therein. Accordingly, Claims 1-7, 9-14, and 16-24 remain pending in the present application, of which Claims 1, 10, and 16 are independent.

No new matter has been introduced by way of the claim amendments; entry thereof is therefore respectfully requested.

Drawings

The Official Action fails to indicate whether the drawings submitted on December 28, 2007 have been accepted or objected to. Because the Official Action does not particularly object to any of the figures, it is assumed that the drawings have been accepted by the Examiner.

Claim Rejection Under 35 U.S.C. §101

The Official Action sets forth a rejection of Claims 1-7, 9-14, and 16-24 as allegedly being directed to non-statutory subject matter. This rejection is respectfully traversed for at least the foregoing reasons.

Independent Claims 1 and 10 have been amended to recite that the claimed apparatus is "embodied in a computer readable medium". In addition, the terms "code for" and "code comprising" have been respectively inserted into Claims 1 and 10.

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Independent Claim 16 has been amended to be directed to a computer readable

storage medium comprising a set of instructions.

Support for the amendments to independent Claims 1, 10, and 16 may at least be

found in the paragraph beginning on page 14, page 8 of the Specification. More particularly,

that paragraph states that the image processing system 10, which includes the components

claimed in Claims 1, 10, and 16, "may be incorporated in a digital camera, or any other

device capable of capturing or receiving an image." Digital cameras and other image

capturing or receiving devices are generally known to include a computer readable medium

on which code for processing images are stored. As such, the above-identified passage

provides support for the feature that the claimed codes are incorporated in an image capturing

or receiving device.

In addition, the amendments to independent Claims 1, 10, and 16 overcome the

rejections based upon 35 U.S.C. §101 because these claims claim functional descriptive

material as part of an otherwise statutory manufacture or machine. Claims 1, 10, and 16 are

directed to statutory machines embodied in computer readable media. As stated in MPEP

2106.01(I), "a claimed computer-readable medium encoded with a computer program is a

computer element which defines structural and functional interrelationships between the

computer program and the rest of the computer which permit the computer program's

functionality to be realized, and is thus statutory."

For at least the foregoing reasons, it is submitted that Claims 1-7, 9-14, and 16-24 are

statutory. The Examiner is therefore respectfully requested to withdraw the rejection of

Claims 1-7 and 9.

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Claim Rejection Under 35 U.S.C. §102

The test for determining if a reference anticipates a claim, for purposes of a rejection

under 35 U.S.C. § 102, is whether the reference discloses all the elements of the claimed

combination, or the mechanical equivalents thereof functioning in substantially the same way

to produce substantially the same results. As noted by the Court of Appeals for the Federal

Circuit in _Lindemann Maschinenfabrick GmbH v. American Hoist and Derrick Co._, 221

USPQ 481, 485 (Fed. Cir. 1984), in evaluating the sufficiency of an anticipation rejection

under 35 U.S.C. § 102, the Court stated:

> Anticipation requires the presence in a single prior art
> reference disclosure of each and every element of the claimed
> invention, arranged as in the claim.

Therefore, if the cited reference does not disclose each and every element of the

claimed invention, then the cited reference fails to anticipate the claimed invention and, thus,

the claimed invention is distinguishable over the cited reference.

Claim 1 has been rejected under 35 U.S.C. §102(a) as allegedly being unpatentable

over the disclosure contained in WO 02089062 to Kimmel et al. For at least the following

reasons, it is respectfully submitted that this rejection is clearly improper and should be

withdrawn.

The Official Action asserts that the iterative estimator 104 depicted in Figure 2 of

Kimmel et al. is equivalent to a Retinex-type processor comprising a local statistics processor

having a cascaded recursive filter. In support of this assertion, the Official Action states that

"the estimator uses among other things the algorithm of figure 4 which uses an output as the

input." _Official Action_, page 4, first paragraph. For at least the following reasons, regardless

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of whether this assertion is correct, Kimmel et al. fails to disclose the claimed "cascaded recursive filtering".

The claimed "cascaded recursive filtering" is described with respect to Figures 1b and 1c, on pages 9 and 10 of the Specification. As described therein, the recursive filter 44 is derived according to several stages. The first stage begins with a one-dimensional case, which varies depending upon various factors. In the next stage, a scheme for a robust 2D envelope version of the recursive filtering is derived, beginning with forcing the envelope condition.

In contrast, Kimmel et al. states that the "image processing module 104 uses a Projected Normal Steepest Descent or similar algorithm, with multi-resolution processing, to compute an estimate 107 of the illumination, designated in Figure 2 as l*". *Kimmel et al.*, page 6, lines 17-19. A clearer description of the processing module 104 is provided in claim 10, which states that the "estimator module (104) employs a construct comprising one or more resolution layers, and an iterative algorithm that processes each of the one or more resolution layers." (Emphasis added) *Id.* at page 18, lines 15-17.

A close inspection of the description of the claimed "cascaded recursive filtering" and the estimator module 104 in Kimmel et al. reveals that they clearly contain differences. For instance, the estimator module 104 of Kimmel et al. performs an iterative algorithm on each of one or more resolution layers; whereas, the cascaded recursive filtering pertains to filtering based upon multiple dimensions.

For at least the foregoing reasons, it is respectfully submitted that Kimmel et al. fails to disclose each and every element claimed in independent Claim 1 of the present invention

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and therefore cannot anticipate this claim. The Examiner is therefore respectfully requested

to withdraw this rejection and to allow Claim 1 and the claims that depend therefrom.

Conclusion

In light of the foregoing, withdrawal of the rejections of record and allowance of this

application are earnestly solicited.

Should the Examiner believe that a telephone conference with the undersigned would

assist in resolving any issues pertaining to the allowability of the above-identified

application, please contact the undersigned at the telephone number listed below.

Please grant any required extensions of time and charge any fees due in connection

with this request to deposit account no. 08-2025.

Respectfully submitted,

Dated: June 26, 2008   By _____
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